



The Truth About the SEC Whistleblower Program

For nearly four decades, Taxpayers Against Fraud (TAF) has fought back on attempts to undermine our nation's anti-fraud efforts. The most recent attack came from a *Bloomberg Law* "investigation" into the SEC's highly successful Whistleblower Program. (See ["Bloomberg Law Whistleblower Investigation Is Hampered by Undisclosed Conflicts and Bias"](#).) But whatever the motives, TAF practitioners universally agree on one thing: *Bloomberg* blatantly manipulated facts about the program and disingenuously distorted the meaning of comments by some whistleblower lawyers in a way that borders on sensationalist journalism. With this brief set of talking points, TAF seeks to set the record straight on key points.

Awards to Culpable Whistleblowers

The SEC's Whistleblower Program already contains powerful safeguards to prevent the most culpable whistleblowers from receiving awards. Whistleblowers convicted of criminal violations related to their disclosures are flat-out ineligible for an award. Period. Full stop. The SEC also has wide discretion to reduce any award to individuals with corresponding liability that falls short of criminal conduct. Both guardrails have proven quite effective in preventing so-called "fraud kingpins" from benefiting from their fraudulent actions. Indeed, in the program's twelve years, TAF can only find two instances where so-called "culpable" whistleblowers received an award of any kind – and those whistleblowers did not plan the fraud, took actions to stop the fraud, and received awards reduced to the lower end of the award range.

That said, no whistleblower program can truly be effective without providing some degree of encouragement to culpable whistleblowers. Culpable whistleblowers often have valuable first-hand knowledge of fraudulent conduct, providing law enforcement with invaluable assistance in identifying the scope, participants, victims, and ill-gotten gains from fraudulent schemes. Paying awards to some of those individuals both enhances the SEC's ability to detect frauds that otherwise would go undetected and deters fraudsters who face a significant risk that one of their co-conspirators could report the fraud.

Bottom line – The SEC's history of rarely rewarding culpable whistleblowers, which the *Bloomberg* article disingenuously glossed over, makes clear that the program strikes the right balance between incentivizing integrity and providing fraudsters with an undue windfall.

Purported Favoritism toward Former SEC Attorneys

Perhaps the most harmful insinuation made by the *Bloomberg* article was to suggest that the SEC plays favorites with its own. *Bloomberg* cited no evidence to support such an outrageous charge of official misconduct because, simply put, there is none. TAF is not aware of a single member-attorney who believes that the SEC grants awards based on attorney resumes rather than the merits of a whistleblower claim. Multiple TAF member-attorneys with no SEC work experience are responsible for dozens of awards totaling hundreds of millions of dollars – including several of the ten largest awards ever granted.

Bloomberg's allegations of favoritism rely most heavily on the fact that one former SEC attorney has received substantial awards on behalf of his clients. While that may be true, it certainly provides no evidence of official corruption. It is no surprise that former SEC attorney, Jordan Thomas, has had success with the program. He was the first to market himself as an SEC whistleblower attorney and has been filing tips literally since the program began. What *Bloomberg* ignores is that several other TAF attorneys with no such SEC work experience have had comparable success on behalf of their clients. That reality makes it impossible to argue that the success of one former SEC attorney demonstrates SEC favoritism. *Bloomberg's* thesis thus relies secondarily (and disingenuously) on the acknowledgement by two former SEC attorneys that whistleblowers sometimes seek them out as counsel due to a perceived advantage that it will provide to their cases. That fact, while possibly true, does not provide the slightest indication that the SEC favors its former employees. Believing is not seeing. The faulty perceptions of whistleblowers prove nothing about the SEC's adherence to its programmatic obligations. *Bloomberg* mistakes an appropriate attorney marketing tool for nefarious conduct on the part of the agency.

The reality is that very few SEC attorneys leave the agency to become whistleblower attorneys. And why is that? Precisely because it's a risky practice that comes with no silver spoons from prior colleagues. While *Bloomberg* focused heavily on former Office of Whistleblower Chief Sean McKessy's decision to join the ranks of SEC whistleblower lawyers, it completely ignored the more well-trod path of former SEC attorneys who joined large defense firms. The revolving door from agency to industry is plainly the problem worthy of concern.

Purported "Secrecy" of SEC Award Determinations

The *Bloomberg* article found fault with the lack of complete transparency in which the program operates. Such a critique misapprehends the very nature of a whistleblower case. What *Bloomberg* saw as "secrecy" is, in fact, the bedrock confidentiality needed to encourage high-level would-be whistleblowers.

The reality is that the SEC is transparent about enforcement actions and issues detailed orders identifying the facts warranting particular sanctions or injunctive relief. But with respect to SEC award determinations, the SEC does not "out" the whistleblowers. As Congress recognized in crafting the SEC Whistleblower Program, such disclosures would force whistleblowers to suffer blacklisting and reputational harm and potentially dissuade prospective whistleblowers from coming forward.

While the unpracticed eye may view such policies as "secrecy," it is exactly what makes the SEC's whistleblower program so desirable from the vantage point of prospective whistleblowers: Their anonymity – and thus their livelihoods and, in some cases, their very lives – will be protected by the program's "secrecy."

The *Bloomberg* article compounds its mistake by conflating the program's necessary lack of transparency with discretionary decisions the SEC sometimes makes behind those closed doors when technical requirements would otherwise prevent the just resolution of a whistleblower claim. To the contrary, the SEC's ability to waive technical requirements that may otherwise bar deserving whistleblowers from receiving awards is critical to a robust whistleblower program. An inflexible, bureaucratic approach undoubtedly would dissuade prospective whistleblowers from coming forward. It is nothing short of perverse for *Bloomberg* to suggest that the SEC's decision to waive a deadline or other rule to reward a worthy whistleblower could somehow be suspicious, regardless of whether the public learns the facts leading to that decision. TAF welcomes such discretionary decision-making and encourages the conservative use of this vital statutory tool.

The SEC Whistleblower Program Is The Country's Best Run Whistleblower Program

At TAF, we follow all of the whistleblower law and programs closely, and the success of SEC Whistleblower Program far outpaces any other program. In twelve short years, the SEC has received approximately 60,000 tips that have led to enforcement actions with monetary sanctions exceeding **\$5 billion** – approximately 4 times the amount paid to whistleblowers responsible for those enforcement actions. (These whistleblower awards are not paid from taxpayer or investor dollars. Instead, awards are paid from a Fund financed entirely through monetary sanctions paid by securities law violators.) Most importantly, harmed investors have recouped **more than \$1 billion** from whistleblowers stepping forward with actionable information.

Simply put, the SEC Whistleblower Program effectively exposes massive fraud schemes and deters future fraud, all while providing the necessary assurances and protections to would-be whistleblowers. As former SEC Chair Clayton noted in a [June 28, 2018 statement](#), the “whistleblower program has contributed significantly to our ability to detect wrongdoing and better protect investors and the marketplace, particularly where fraud is well-hidden or difficult to detect . . . the strength of our whistleblower program is a critical component in our investor protection toolbox.” In turn, one must wonder why someone would seek to tinker with such a “critical” fraud-fighting tool.